

STATE OF MICHIGAN
COURT OF APPEALS

CENTRAL AUTO LEASING, INC. and JOHN
MANIACI,

UNPUBLISHED
March 31, 2000

Plaintiffs-Appellants,

v

No. 210618
Wayne Circuit Court
LC No. 97-721814 NO

STEPHEN R. FELSON,

Defendant-Appellee,

and

DANIEL KEITH,

Defendant.

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant-appellee Felson's motion for summary disposition under MCR 2.116(C)(10) in this legal malpractice action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs were parties to a contract action and two discrimination actions involving First of America Bank. After an exchange of correspondence, plaintiffs retained Felson. Felson expressly stated that his representation was limited to the discrimination action, and that he would not mount a defense to the bank's contract claim. After a continuing exchange of correspondence, Felson withdrew from the representation. Plaintiffs retained another attorney, and the second federal discrimination claim was dismissed on the merits. Plaintiffs then brought this legal malpractice action.

A plaintiff in a legal malpractice action has the burden of proving the following: (1) the existence of an attorney-client relationship, (2) the acts that are alleged to have constituted the negligence, (3) that the negligence was the proximate cause of the alleged injury, and (4) the fact and extent of the injury. *Teodorescu v Bushnell, Gage, Reizen & Byington (On Remand)*, 201 Mich App 260, 264; 506

NW2d 275 (1993). Factual causation is established by showing that, but for the attorney's negligence, the client would have prevailed in the underlying suit. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 586; 513 NW2d 773 (1994).

Defendant submitted documents that established that his representation was limited to the discrimination action, which was dismissed on the merits. The only evidence submitted by plaintiffs to contradict this assertion is the conclusory affidavit of Mr. Maniaci. A party opposing summary disposition under MCR 2.116(C)(10) may not rest upon mere allegations, but must by affidavit or other documentary evidence set forth specific facts showing that there is a genuine issue for trial. *Allen v Comprehensive Health Services*, 222 Mich App 426, 433-434; 564 NW2d 914 (1997). Statements of the nonmoving party's conclusions, unsupported by allegations of fact on which they are based, are insufficient to establish a genuine issue of material fact. *Bowerman v Malloy Lithographing, Inc*, 171 Mich App 110, 115-116; 430 NW2d 742 (1988). The court properly granted summary disposition to defendant.

Affirmed.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey